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*Governor*

STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF MORTGAGE LENDING  
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DIANNE CORNWALL  
*Director*

JOSEPH L. WALTUCH  
*Commissioner*

Date: September 3, 2009

To: All Licensees

Re: **IMPORTANT INFORMATION REGARDING CHANGES IN NRS 645A, 645B, 645E and 645F**

There were several bill passed during the 75<sup>th</sup> Session of the Nevada Legislature affecting all licensees. Below is a synopsis of the essential sections of each bill, separated by the affected chapters. However, it is imperative that you read the full enrolled text of the bills to ensure you remain in compliance with the law. There is a hyper-link embedded in each bill section which will open the enrolled version to assist in your review.

[Assembly Bill No. 486](#)- effective 10-1-09:

**NRS 645A, Escrow Agency:**

- **Section 2** of this bill authorizes the Commissioner of Mortgage Lending to require escrow agencies and escrow agents to pay restitution under certain circumstances.
- **Section 3** of this bill provide that if any person engages in the escrow business without a license, the contract for the transaction in question may be voided by the other parties to the contract.
- **Sections 4 and 5** of this bill provide that parties to certain escrow transactions may bring a civil suit against the person who has engaged in the escrow without a license and also establish provisions relating to the exercise of jurisdiction by a court of this State.
- **Section 6** of this bill increases the fine imposed on escrow agencies or agents from \$500 to \$10,000 for each occurrence of certain violations.

**NRS 645B, Mortgage Brokers:**

- **Sections 8 and 9** of this bill require a mortgage broker, as a condition to doing business in this State, to deposit with the Commissioner a corporate surety bond or other security in the amount of \$50,000 for the principal office and \$25,000 for each branch office, not to exceed an aggregate amount of \$75,000.
- **Section 10** of this bill allows a surety to cancel a bond with notice and requires the Commissioner to inform a mortgage broker or mortgage agent that his license will be revoked unless an equivalent bond or security is deposited before the cancellation.
- **Section 11** of this bill provides for the manner in which claims against a bond may be paid.

- **Section 12** of this bill provides that a mortgage broker or mortgage agent has a fiduciary obligation to his client.
- **Section 13** of this bill authorizes the Commissioner of Mortgage Lending to require mortgage brokers and mortgage agents to pay restitution under certain circumstances.
- **Section 14** of this bill provides that if any person engages in the business of a mortgage broker or agent without a license, the contract for the transaction in question may be voided by the other parties to the contract.
- **Sections 15 and 16** of this bill provide that parties to certain mortgage transactions may bring a civil suit against the person who has engaged in the mortgage business without a license and also establish provisions relating to the exercise of jurisdiction by a court of this State.

#### **NRS 645E, Mortgage Bankers:**

- **Section 19** of this bill authorizes the Commissioner of Mortgage Lending to require mortgage bankers to pay restitution under certain circumstances.
- **Section 20** of this bill provides that if any person engages in the business of a mortgage banker without a license, the contract for the transaction in question may be voided by the other parties to the contract.
- **Sections 21 and 22** of this bill provide that parties to certain mortgage transactions may bring a civil suit against the person who has engaged in the mortgage business without a license and also establish provisions relating to the exercise of jurisdiction by a court of this State.

#### **NRS 635F, Loan Servicers (Registration requirement is applicable to mortgage brokers, mortgage bankers and escrow agencies that service mortgage loans)**

- **Section 25** of this bill requires persons and institutions in the business of servicing mortgage loans secured by a lien on real property located in this State to register with the Commissioner. The registration form is available on our Web site under the forms link in sub-section 20.

**Assembly Bill No. 523**- effective 10-1-09: **Sections 1-84 and 84.5** of this bill implement the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, although Nevada is not currently participating in the National Mortgage Licensing System. This bill expands the individuals subject to licensure as mortgage agents to include residential loan originators of licensed bankers, banker and broker owners that conduct residential loan originations as well as any person authorized to engage in activities as a residential mortgage loan originator on behalf of a privately insured institution or organization licensed under title 55 or 56 of NRS.

#### **NRS 645B, Mortgage Brokers (Also Affects Mortgage Bankers)**

- **Section 1.5 through 6** of this bill define the following “Clerical or ministerial tasks” “Nationwide Mortgage Licensing System and Registry” “Residential mortgage loan” “Residential mortgage loan originator”.
- **Section 8** of this bill requires a mortgage broker or qualified employee who wishes to engage in activities as a residential mortgage loan originator or supervise a mortgage agent who engages in activities as a residential mortgage loan originator to obtain and

maintain a license as a mortgage agent. (R058-08, which became law on April 23, 2009, already required non-owner QE's to be licensed as mortgage agents).

- **Section 21** of this bill redefines mortgage agent and, among other changes, no longer allows a mortgage agent to be an independent contractor of the mortgage broker; all agents must now be W-2 employees. The licensing requirement to hold a mortgage agent license now includes persons working for a mortgage banker, including the banker and qualified employee, who conduct residential loan originations. If the mortgage broker or mortgage banker license is held as a LLC or LLP, the members or partners cannot be paid as W-2 employees pursuant to IRS guidelines. The Division recognizes this and will not take issue with members or partners required to hold mortgage agent licenses that are reported for tax purposes through a schedule K-1.
- **Section 23** of this bill requires new applicants to complete pre-licensing education, as well as successfully pass a written examination.
- **Section 50.1** of this bill removes the ability for the Commissioner of Mortgage Lending to grant an exception pursuant to NRS 645B.018 if the transaction involves a residential mortgage loan.
- **Sections 50.2, 50.3, 50.4, 50.5 and 50.6** of this bill incorporate standards required by the S.A.F.E. Act to hold a license as a mortgage broker or mortgage agent.
- **Section 50.7** of this bill requires a mortgage broker to report any fraudulent acts by their mortgage agents to the Division.
- **Section 55** of this bill increases the administrative fine the Commissioner of Mortgage Lending may impose upon an applicant for or a holder of a license as a mortgage broker or mortgage agent for certain violations from \$10,000 to \$25,000 for each violation. (NRS 645B.670)
- **Section 85.5** of this bill repeals provisions for the licensing of certain persons on behalf of a corporation or limited-liability company as mortgage agents.

#### **NRS 645E, Mortgage Bankers**

- **Section 59.1** of this bill requires a mortgage banker, qualified employee or any employee or independent contractor of a mortgage banker who engages in activities as a residential mortgage loan originator or who supervises a mortgage agent who engages in activities as a residential mortgage loan originator, to be licensed as a mortgage agent pursuant to the provisions of NRS 645B.400 to 645B.460. As part of the licensing process, applicants are required to complete 30 hours of pre-licensing education and successfully pass a test administered by PSI. Information regarding the test is available on the Division's Web site under "MLD Updates" and information regarding available classes may be found under the education link. The bill allows a transition period for bankers and their employees to complete the licensing process; however the Division encourages affected persons to submit their applicants as soon as possible to ensure compliance.
- **Section 59.3** of this bill requires mortgage bankers to exercise supervision of their mortgage agents and establishes guidelines for that supervision.

- **Section 59.5** of this bill requires a mortgage banker to provide the mortgage agent and the Division in writing on a prescribed form when an agent leaves their employ.
- **Section 59.7** of this bill allows the Division to impose fines for unlicensed mortgage banker activity, as well as impose fines and revoke a license if a mortgage broker fails to maintain suitable records at the licensed location and fails, with 20 days of being ordered by the Commission, to provide records.

#### **NRS 645F, General Chapter Section**

- **Section 82** of this bill allows the Division to include mortgage agents in the calculation for the annual Attorney General Assessment.

#### **Assembly Bill No. 151**- effective 5-29-09: (**NRS 645B Mortgage Brokers**)

- **Section 1** of this bill requires a mortgage broker to include his license number on each loan secured by a lien on real property for which he engages in activity as a mortgage broker. For a loan secured by a lien on real property that is made on or after the effective date of this act but before October 1, 2009, a mortgage broker who does not include his license number on the loan as required by section 1 of this act may, without penalty, cure his failure to comply with section 1 of this act not later than 30 days after the date the loan is made. The Commissioner of Mortgage Lending provided a [guidance letter](#) to assist mortgage brokers in complying with the requirements of this bill.

#### **Assembly Bill No. 513**- effective 5-29-09, unless otherwise noted:

##### **NRS 645A Escrow Agency:**

- **Sections 3 and 4** of this bill establish educational prerequisites and continuing education requirements for an escrow agent or agency. (effective 1-1-2011)
- **Sections 5** of this bill provide that the jurisdiction and authority of the Commissioner of Mortgage Lending is unaffected by the expiration or voluntary surrender of a license as an escrow agent or agency.
- **Sections 6** of this bill provide that the Commissioner may subpoena documents without also subpoenaing the custodian of such documents.

##### **NRS 645B, Mortgage Brokers**

- **Section 13** requires a mortgage broker to make additional disclosures pertaining to fees earned by the mortgage broker and any impact such fees may have on the terms of the loan. The Commissioner of Mortgage Lending provided a guidance letter and suggested form to assist mortgage brokers in complying with the requirements of this bill. The letter and form is located in the "letters/notices link on the home page of our Web site.
- **Section 8** of this bill provides that if the beneficial interest in a loan for real property belongs to more than one natural person, the holders of 51 percent or more of the outstanding principal balance may act on behalf of all the holders of the beneficial interests of record. The section revises the provisions of NAC 645B.073.

- **Section 9** of this bill provide that the jurisdiction and authority of the Commissioner of Mortgage Lending is unaffected by the expiration or voluntary surrender of a license as a mortgage broker or mortgage agent.
- **Section 12** of this bill provides that the Commissioner may subpoena documents without also subpoenaing the custodian of such documents.
- **Section 11** of this bill requires that a business applying for an exemption to provide support it has the right conduct mortgage activity pursuant to the authority of its regulator.

#### **NRS 645E, Mortgage Bankers**

- **Section 15** of this bill provide that the jurisdiction and authority of the Commissioner of Mortgage Lending is unaffected by the expiration or voluntary surrender of a license as a mortgage broker or mortgage agent.
- **Section 18** of this bill provides that the Commissioner may subpoena documents without also subpoenaing the custodian of such documents.
- **Section 17** of this bill requires that a business applying for an exemption to provide support it has the right conduct mortgage activity pursuant to the authority of its regulator.

#### **Assembly Bill No. 144**- effective 10-1-09: (**NRS 645B Mortgage Brokers**)

- **Section 1** of this bill prohibits the results of an annual examination from being released to the public until after a period of time set by the Commissioner of Mortgage Lending to determine any objections made by the mortgage broker to the results.
- **Section 2** of this bill revises the requirements for release of information for mortgage brokers who make or offer for sale in this State any investments in promissory notes secured by liens on real property related to information regarding ownership and management structure, annual or biennial examinations, other examinations or audits, investigations or hearings, and standards for withholding other information.
- **Section 2.5** of this bill requires the appraisal to be made not more than 6 months before the mortgage broker's first solicitation for the loan and the appraisal to meet certain standards.
- **Section 2.5** further requires a mortgage broker to make additional disclosures to an investor if the investor waives the requirement that an appraisal be obtained.

**Assembly Bill No. 152**- effective 7-1-09 (**NRS 645F**): This bill established a licensing requirement for persons conducting loan modification consultant, foreclosure consultant or covered service activities, as defined. The licensing, as well as other standards were expanded through regulation **R052-09** which became law on 8-25-09. A [synopsis](#) of the regulation may be found on the Division's Web site home page. Mortgage brokers, mortgage bankers and mortgage agents may not conduct these activities for compensation without obtaining the new applicable license.

**Assembly Bill 133** –effective 10-1-09 (**NRS 645A**): This bill establishes provisions for the proper disbursement of money from an escrow account relating to a real estate transaction. This bill prohibits the disbursement of such money until deposits that are at least equal to the proposed disbursements have been received. This bill also prohibits disbursements on the same business day as the funds are deposited unless the deposits are made in certain forms which allow for the immediate withdrawal of the money.